



February 2, 2007

## HOUSE BILL No. 1388

DIGEST OF HB 1388 (Updated January 31, 2007 3:18 pm - DI 103)

**Citations Affected:** IC 5-28; IC 6-2.5; IC 6-3.1.

**Synopsis:** Film industry production incentives. Authorizes a rebate for certain media production expenses incurred in Indiana. Appropriates money from the state general fund to pay the rebates. Expands the sales tax exemption for property acquired for use in a motion picture production to property acquired for use in digital media productions, audio recordings, music videos, and television and radio advertising. Provides that a qualified applicant may not claim a rebate and a sales tax exemption for the purchase of the same tangible personal property. Expands the availability of the Hoosier business investment tax credit for investments in motion picture and audio productions to investments in the production of digital media. Provides that for purposes of the Hoosier business investment tax credit, the actors, performers, crew members, and other individuals employed in the making of a motion picture or audio production are considered full-time employees.

**Effective:** January 1, 2007 (retroactive).

**Denbo, Welch, Lutz J, Borrer,  
Hinkle**

January 16, 2007, read first time and referred to Committee on Small Business and Economic Development.  
February 1, 2007, amended, reported — Do Pass.

HB 1388—LS 7159/DI 92+



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February 2, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## HOUSE BILL No. 1388

A BILL FOR AN ACT to amend the Indiana Code concerning taxation and to make an appropriation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 5-28-22-0.4 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE  
3 JANUARY 1, 2007 (RETROACTIVE)]: **Sec. 0.4. As used in this**  
4 **chapter, "qualified applicant" means a limited liability company**  
5 **that is:**

- 6 (1) **domiciled in Indiana; and**  
7 (2) **engaged in the business of making qualified productions in**  
8 **Indiana.**

9 SECTION 2. IC 5-28-22-0.6 IS ADDED TO THE INDIANA CODE  
10 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE  
11 JANUARY 1, 2007 (RETROACTIVE)]: **Sec. 0.6. (a) As used in this**  
12 **chapter, "qualified production" refers to the following:**

- 13 (1) **Any of the following that is produced for any combination**  
14 **of theatrical or television viewing or as a television pilot:**  
15 (A) **A feature length film, including a short feature, an**  
16 **independent or studio production, or a documentary.**  
17 (B) **A television series, program, or feature.**

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(2) A digital media production that is intended for reasonable commercial exploitation.

(3) An audio recording or a music video.

(4) An advertising message broadcast on radio or television.

(b) The term includes preproduction, production, and postproduction work.

(c) The term does not include a production in any medium that is obscene (under the standard set forth in IC 35-49-2-1) or television coverage of news or athletic events.

SECTION 3. IC 5-28-22-0.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]: **Sec. 0.8.** As used in this chapter, "qualified production expenditure" means any of the following expenses incurred in Indiana or expenditures in Indiana made in the direct production of a qualified production in Indiana:

(1) The payment of wages, salaries, and benefits to Indiana residents.

(2) Acquisition costs for a story or scenario used in the qualified production.

(3) Acquisition costs for locations, sets, wardrobes, and accessories.

(4) Expenditures for materials used to make sets, wardrobes, and accessories.

(5) Expenditures for photography, sound synchronization, lighting, and related services.

(6) Expenditures for editing and related services.

(7) Facility and equipment rentals.

(8) Food and lodging.

(9) Airfare if the tickets are purchased through an Indiana based travel agency.

(10) Insurance coverage if purchased through an Indiana based insurance agent.

(11) Legal services if purchased from an attorney licensed to practice law in Indiana.

(12) Any other expenditure recognized as a direct cost of production in accordance with generally accepted entertainment industry practices.

SECTION 4. IC 5-28-22-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]: **Sec. 3.** (a) A qualified applicant that:

(1) incurs or makes qualified production expenditures; and

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(2) satisfies the requirements of this section; may apply for a rebate from the corporation. The maximum rebate amount is determined under subsection (c). A rebate issued under this section may not exceed twenty-five percent (25%) of the qualified applicant's qualified production expenditures.

(b) A qualified applicant is not eligible for the maximum rebate allowed under this section unless:

(1) the qualified applicant's levels of Indiana purchasing and Indiana hiring in a particular year, as determined under subsection (f), are at least equal to the standard percentages set forth in subsection (e); and

(2) the corporation determines that the qualified production expenditures for which the qualified applicant applied for a rebate are paid in full.

(c) The maximum amount of a rebate issued under this section is equal to:

(1) the sum of the qualified production expenditures incurred by the qualified applicant; multiplied by

(2) a percentage equal to:

(A) twenty-five percent (25%); minus

(B) the greater of:

(i) zero (0); or

(ii) the number determined under subsection (e).

(d) The corporation may withhold not more than twenty-five percent (25%) of the maximum rebate amount determined under subsection (c) for a qualified applicant until the corporation determines that the qualified production expenditures for which the qualified applicant applied for a rebate are paid in full. After the corporation determines that:

(1) the qualified production expenditures are paid in full; and

(2) the qualified applicant satisfies the other requirements of this section;

the corporation shall issue to the qualified applicant the remaining part of the maximum rebate amount determined under subsection (c) for the qualified applicant.

(e) The corporation shall compare the result determined under subsection (f)(5) to the following standard percentages of Indiana purchasing and Indiana hiring in a particular year to determine whether a qualified applicant is entitled to the maximum rebate allowed under this section:

Year	Standard Percentage
2007	40%

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1	2008	50%
2	2009 and each year thereafter	60%

3 The corporation shall determine the difference between the result  
4 determined under subsection (f)(5) and the standard percentages  
5 set forth in this subsection. The corporation shall express the result  
6 as a whole number.

7 (f) To determine a qualified applicant's levels of Indiana  
8 purchasing and Indiana hiring for purposes of making the  
9 comparison to the standard percentage set forth in subsection (e),  
10 the corporation shall do the following:

11 (1) Determine to the nearest whole percentage point the  
12 percentage of purchases made in the making of the qualified  
13 productions during the year that were made in Indiana.

14 (2) Determine to the nearest whole percentage point the  
15 percentage of individuals employed in the making of the  
16 qualified productions during the year who were residents of  
17 Indiana.

18 (3) Determine the sum of the percentages determined under  
19 subdivisions (1) and (2).

20 (4) Determine the product of:

21 (A) the sum determined under subdivision (3); divided by  
22 (B) two (2).

23 (5) Round the product determined under subdivision (4) up to  
24 the nearest whole percentage point.

25 (g) A qualified applicant is not entitled to a rebate under this  
26 section in a particular year unless the qualified applicant's levels  
27 of Indiana purchasing and Indiana hiring, as determined under  
28 subsection (f), at least equal the following:

29	Year	Minimum Percentage
30	2007	16%
31	2008	26%
32	2009 and each year thereafter	36%

33 (h) An internship in which an Indiana resident is permitted to  
34 shadow or follow an individual employed by a qualified applicant  
35 must be considered by the corporation when determining under  
36 subsection (f)(2) the percentage of Indiana residents hired by the  
37 qualified applicant in the course of making a qualified production  
38 in Indiana.

39 (i) The corporation may adopt rules and prescribe forms  
40 necessary to implement this section. A qualified applicant shall  
41 provide the corporation with any information necessary to  
42 determine the amount of the rebate to which the qualified

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applicant is entitled under this section, including proof of the qualified applicant's payment in full of qualified production expenditures.

(j) A rebate issued under this chapter is payable from money appropriated to the corporation. The amount necessary to implement this section is continuously appropriated from the state general fund to the corporation for the purposes of this section.

(k) A qualified applicant is not entitled to a rebate under this section for tangible personal property:

(1) that is a qualified production expenditure; and

(2) for which the qualified applicant claims an exemption under IC 6-2.5-5-41.

SECTION 5. IC 5-28-22-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]: **Sec. 4. (a) Before making a qualified production in Indiana, a qualified applicant may apply to the corporation for a certificate of rebate eligibility. A certificate issued under this section must contain the estimated value of any rebate that may be issued under section 3 of this chapter for the qualified applicant's qualified production expenditures.**

**(b) A certificate issued under this section may be used as evidence of the qualified applicant's proposed investment in Indiana.**

**(c) The corporation may adopt rules and prescribe forms necessary to implement this section. A qualified applicant shall provide the corporation with any information necessary to estimate the value of a rebate that may be issued under section 3 of this chapter.**

**(d) The estimated values specified on a certificate issued under this section are not binding upon the corporation for the purposes of determining the maximum amount of a rebate to which a qualified applicant is entitled under section 3 of this chapter.**

SECTION 6. IC 6-2.5-5-41 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]: **Sec. 41. (a) As used in this section, "motion picture "qualified production" means:**

**(1) a feature length film, including a short feature and an independent or studio production; or a documentary; or**

**(2) a television series, program, or feature;**

**produced for any combination of theatrical or television viewing; or as a television pilot. The term includes preproduction; production; and postproduction work. However, the term does not include a motion**

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picture that is obscene (under the standard set forth in IC 35-49-2-1) or television coverage of news or athletic events: **has the meaning set forth in IC 5-28-22-0.6.**

(b) Except as provided in ~~subsection (d)~~, **subsections (d) and (e)**, a transaction involving tangible personal property is exempt from the state gross retail tax if the person acquiring the property acquires it for the person's direct use in a ~~motion picture~~ **qualified** production in Indiana after December 31, 2006.

(c) For purposes of this section, the following are not considered to be directly used in the production of a ~~motion picture~~ **qualified** production:

(1) Food and beverage services.

(2) A vehicle or other means of transportation used to transport actors, **performers**, crew members, or any other individual involved in a ~~motion picture~~ **qualified** production.

(3) Fuel, parts, supplies, or other consumables used in a vehicle or other means of transportation used to transport actors, **performers**, crew members, or any other individual involved in a ~~motion picture~~ **qualified** production.

(4) Lodging.

(5) Packaging materials.

(d) A person is not entitled to an exemption under this section with respect to a transaction involving tangible personal property **that is:**

(1) **a qualified production expenditure (as defined in IC 5-28-22-0.8); or**

(2) acquired for direct use in a ~~motion picture~~ **qualified** production in Indiana if the transaction occurs after December 31, 2008.

SECTION 7. IC 6-3.1-26-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]: Sec. 4. ~~As used in this chapter, (a) Except as provided in subsection (b), "full-time employee", for purposes of this chapter,~~ has the meaning set forth in IC 6-3.1-13-4.

**(b) In the case of an investment in a motion picture or audio production, the actors, performers, crew members, and other individuals employed in the making of the motion picture or audio production are considered full-time employees.**

SECTION 8. IC 6-3.1-26-5.5, AS ADDED BY P.L.199-2005, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]: Sec. 5.5. As used in this chapter, "motion picture or audio production" means a:

(1) feature length film;

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1 (2) video;  
2 (3) television series;  
3 (4) commercial;  
4 (5) music video or an audio recording; ~~or~~  
5 (6) corporate production; **or**  
6 **(7) digital media production;**  
7 for any combination of theatrical, television, or other media viewing or  
8 as a television pilot. The term does not include a motion picture that is  
9 obscene (as described in IC 35-49-2-1) or television coverage of news  
10 or athletic events.  
11 **SECTION 9. An emergency is declared for this act.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Small Business and Economic Development, to which was referred House Bill 1388, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 14, after "incurred" insert "**in Indiana**".

Page 2, line 14, after "expenditures" insert "**in Indiana**".

Page 2, line 16, delete "." and insert "**to Indiana residents.**".

Page 3, line 1, delete "corporation in an amount" and insert "**corporation. The maximum rebate amount is**".

Page 3, line 2, delete "(b)." and insert "(c)".

Page 3, line 4, after "expenditures.", begin a new paragraph and insert:

"(b)".

Page 3, line 6, after "unless" insert ":

(1)".

Page 3, line 8, delete "(d)," and insert "(f)".

Page 3, line 9, delete "(c)." and insert "(e); and

**(2) the corporation determines that the qualified production expenditures for which the qualified applicant applied for a rebate are paid in full.**".

Page 3, line 10, delete "(b) A" and insert "(c) **The maximum amount of a**".

Page 3, line 17, delete "(c)." and insert "(e)".

Page 3, between lines 17 and 18, begin a new paragraph and insert:

**"(d) The corporation may withhold not more than twenty-five percent (25%) of the maximum rebate amount determined under subsection (c) for a qualified applicant until the corporation determines that the qualified production expenditures for which the qualified applicant applied for a rebate are paid in full. After the corporation determines that:**

**(1) the qualified production expenditures are paid in full; and**

**(2) the qualified applicant satisfies the other requirements of this section;**

**the corporation shall issue to the qualified applicant the remaining part of the maximum rebate amount determined under subsection (c) for the qualified applicant."**

Page 3, line 18, delete "(c)" and insert "(e)".

Page 3, line 19, delete "(d)(5)" and insert "(f)(5)".

Page 3, line 28, delete "(d)(5)" and insert "(f)(5)".

Page 3, line 31, delete "(d)" and insert "(f)".

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Page 3, line 33, delete "(c)," and insert "(e),".

Page 4, line 7, delete "(e)" and insert "(g)".

Page 4, line 10, delete "(d)," and insert "(f),".

Page 4, line 15, delete "(f)" and insert "(h)".

Page 4, line 18, delete "(d)(2)" and insert "(f)(2)".

Page 4, line 21, delete "(g)" and insert "(i)".

Page 4, line 25, delete "section." and insert **"section, including proof of the qualified applicant's payment in full of qualified production expenditures."**

Page 4, line 26, delete "(h)" and insert "(j)".

Page 4, between line 29 and 30, begin a new paragraph and insert:  
**"(k) A qualified applicant is not entitled to a rebate under this section for tangible personal property:**

**(1) that is a qualified production expenditure; and**

**(2) for which the qualified applicant claims an exemption under IC 6-2.5-5-41."**

Page 5, line 6, after "the" insert **"maximum"**.

Page 5, line 21, strike "subsection (d)," and insert **"subsections (d) and (e),"**

Page 5, line 40, after "property" insert **"that is:**

**(1) a qualified production expenditure (as defined in IC 5-28-22-0.8); or**

**(2)".**

and when so amended that said bill do pass.

(Reference is to HB 1388 as introduced.)

ORENTLICHER, Chair

Committee Vote: yeas 11, nays 0.

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